IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1523 OF 2007

Navid Hasan Mushrif ..Petitioner.

Vs.

The State of Maharashtra
& Ors. ..Respondents.

Mr.M.L.Patil for the Petitioner.
Mr.C.R.Sonawane, A.G.P. for Respondent No.1.
Mr.S.B.Shetye for Respondent No.2.

CORAM: F.I. REBELLO AND
R.M. SAVANT, JJ.
DATED: 5TH MARCH, 2007.

P.C. :

The Petitioner was a candidate who had filled his nomination for contesting election to the Zilla Parishad. His nomination form was accepted. Another candidate aggrieved, preferred an Election Appeal No.58 of 2007. That Appeal was allowed by holding that the Petitioner was not qualified to be nominated. It is this order which is the subject matter of the present petition.

2. At the hearing of this petition, on behalf of the Petitioner, the learned counsel has raised two contentions; i) it is submitted that the provision for Appeal under the rules framed under The

Maharashtra Zilla Parishads And Panchayat Samitis Act, 1961, considering Article 243(O) is illegal, null and void and, consequently, it must be held that the District Court has no jurisdiction. It is next submitted that the Petitioner has crossed the age of 20 years though had not reached the age of 21 years and considering the terminology of the rules and the provisions of Sections 15, 16 of the Act and Article 243F of the Constitution, he was eligible to contest the elections.

The impugned order therefore discloses an error of law, apparent on the face of the record and, consequently, the same is required to be set aside.

3. We shall deal with the second contention first. In so far as the second submission is concerned, the entire argument is that the language of section 15 of The Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 requires that a person is qualified to be elected, who is not less than 21 years of age on the last date fixed for making the nominations. Section 16 is the provision providing for disqualification. The proviso to Section 16(1)(a) only sets out that no person shall be disqualified on the ground that he is less than 25

years of age, if a candidate has attained the age of 21 years. It is not necessary for us to enquire as to why 25 years has been included. Suffice it to say that Sections 15, 16 will have to be harmoniously construed with Article 243-F of the Constitution. A harmonious construction of Sections 15 and 16 in the first instance, would clearly indicate that a candidate ought not to be less than 21 years of age on the last date fixed for making the nominations. The language in the Constitution under Article 243F also provides that if a candidate has attained the age of 21 years of age, he shall not be disqualified on the ground that he is less than 25 years of age.

The entire submission of the Petitioner is based on the judgment of the Supreme Court in **Salag Ram Sharma v. State of Rajasthan & Anr., (2005) 10 Supreme Court Cases, 77**. The matter pertained to the age of superannuation. To contend that he has not reached the age of superannuation, the Petitioner before the Supreme Court has relied upon the Indian Majority Act, 1875. The Hon'ble Supreme Court therefore was considering the issue in that context. The Court noted that superannuation refers to the age of completion of a period of service.

The Court thereafter noted that attainment of majority on the other hand relates to the beginning of the age of majority. In these circumstances, the Court held that the date of completion and the date of beginning cannot be taken to be the same. We have also referred to Sections 15 and 16 of the Act which clearly speaks out that a candidate who is not less than 21 years of age on the last date for nomination. Similar is the language of the Constitution. Both contemplates that a candidate must have completed 21 years of age. In the instant case, the Petitioner has completed 20 years and 7 months and, therefore, in terms of the Sections 15 and 16 of the Act and the provisions of the Constitution, he was not eligible to contest. The order passed by the Returning Officer therefore was clearly without jurisdiction and/or discloses an error of law apparent on the face of the record. Even if an Appeal was not maintainable, the order had to be set aside, invoking the power of superintendence.

4. In so far as the first submission is concerned, it is clear that Article 243-O provides that the election to any Panchayat shall be called in question except by an Election Petition. We are at

the stage, in the process of election. The rules have been framed for providing an internal Appeal under the provisions of The Maharashtra Zilla Parishads And Panchayat Samities Act, 1916.

In the petition, the Petitioner prays to declare the said rule as violative of Article 243-O of the Constitution of India. In the instant case, the Petitioner has filed the nomination papers. The election is incomplete. A prima-facie reading of Article 243-O, means that the results of the election cannot be disputed or challenged except by way of Election Petition. The election is not complete. At any rate, considering that we have held the Petition was not qualified to contest, we leave the question open.

In the light of that, the petition is dismissed.

(R.M. SAVANT, J.) **(F.I. REBELLO, J.)**